No. 610.

Motion to advance.

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In the Supreme Court of the United States.

OCTOBER TERM, 1901.

ROBERT W. McCLAUGHRY, APPELLANT,
v.
PETER C. DEMING.
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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

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The appellee in the above-entitled case, Peter C. Deming, was a captain in the Subsistence Department of the Volunteer Army of the United States. On April 3, 1900, a general court-martial was convened at San Francisco, Cal., to try him on certain charges and specifications in which he was charged with embezzlement and forgery. He was arraigned, made no objection to the composition of the court, pleaded guilty, was convicted, and sentenced to dismissal from the service of the United States and to confinement in the penitentiary for three years, which sentence was approved by the Secretary of War and confirmed by the President of the United States.

It was claimed on behalf of petitioner that General Shafter, who is a retired officer of the Regular Army,

had no authority to convene the court which tried him, and that said court was not regularly constituted or organized, in that it was composed entirely of officers of the Regular Army, who were expressly prohibited to hear or determine any charge against him, an officer of the Volunteer Army, under the seventy-seventh article of war (section 1342, R. S.), which reads:

> Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in article 78.

the Government, on the other hand, contending on behalf of the respondent, McClaughry, the warden of the penitentiary, that the Volunteer Army, of which the petitioner was an officer at the time of his trial, conviction, and imprisonment, was not "other forces" within the meaning of article 77. Petitioner for this and other reasons claimed that he was deprived of his liberty without due process of law, and in violation of his rights under the Constitution, and thereupon filed his petition for a writ of habeas corpus, which on hearing was denied. On appeal to the circuit court of appeals the decision of the circuit court was reversed and the case remanded with orders to issue the writ and discharge the prisoner. From the order to the circuit court discharging the petitioner this appeal is taken. The petitioner has been released on bail in the sum of $2,000.

This case is one of unusual and grave importance. Several hundred officers and men who served in the

Volunteer Army during the Spanish war and thereafter up to June 30, 1901, were tried, convicted, and sentenced by tribunals composed, wholly or in part, of officers of the Regular Army. Several have already been released by habeas corpus proceedings, and others, again, released on bail, pending the decision of this case. Furthermore, the War Department is proceeding in like manner in other cases. If the practice of the Government in this respect is illegal and void, it is of the highest importance to the good order of the Army that it shall be determined as promptly as possible. For these reasons the Solicitor-General, notwithstanding the lateness of the application, feels constrained to ask the court to advance the case on the docket for hearing during the present term on such day as may be convenient to the court.

Opposing counsel concur in this application, and both sides can be ready within a week to present the case to the court.

J. K. RICHARDS,
Solicitor-General.

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